IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14891 of 2004

to

SPECIAL CIVIL APPLICATIONNo 14895 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DINESHKUMAR SUJANMAL CHORDIYA

Versus

COMMISSIONER OF TRANSPORT

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Appearance:

1. Special Civil Application No. 14891, 14892 of 2004
MR KETAN D SHAH for Petitioner No. 1
MR MR MENGDEY, learned A.G.P. for Respondent No. 1

2. Special Civil Application No.14893, 14894, 14895 of 2004
MR KETAN D SHAH for Petitioner No.1
MR A.D.OZA, learned G.P. for Respondent No.1

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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 21/12/2004

ORAL JUDGEMENT

#. Rule. Shri M.R.Mengdey, learned A.G.P. waives service of rule on behalf of the respondent in special civil application nos. 14891 and 14892 of 2004 and Shri A.D.Oza, learned G.P. waives service of rule on behalf of the respondent in special civil application nos. 14893, 14894 and 14895 of 2004.

#. In these petitions, the petitioners are the owners of Motor Vehicle Nos. HR-55 C 0629, HR 38 K 2997, HR 47 A 1149, HR 55 B 1217, HR 38 G 2874 registered with different authorities under the Motor Vehicles Act, 1988 and the petitioners have challenged the action of the respondents in ignoring GBW mentioned in RC books for recovering overload charges and compounding fees. It is the contention on behalf of the petitioners that inspite of the fact that the loan in the vehicle do not exceed the GBW mentioned in the RC book, the respondent authorities are compelling the petitioners to pay the overload charges and compounding fees. It is also further submitted that the Government notification issued by the Joint Director of Transport, Gujarat State dated 9.8.2002 has been quashed and set aside by this Court vide judgment and order dated 25.10.2004 (Coram : K.S.Jhaveri, J) in SCA no. 1290 of 2003 and other cognate matters. Learned advocates appearing on behalf of the petitioners have relied upon the judgment and order passed by the learned Single Judge of this Court dated 2.10.2004 in SCA No. 1290 of 2003 and other cognate matters.

#. In response to the notice issued by this Court, Shri M.R.Mengdey, learned A.G.P. appears on behalf of the respondent in special civil application nos. 14891 and 14892 of 2004 and Shri A.D.Oza, learned G.P. appears on behalf of the respondent on behalf of the respondent in special civil application nos. 14893, 14894 and 14895 of 2004. He is not in a position to dispute that the facts of the petitioners' case are not covered by the judgment of the learned Single Judge of this court dated 25.10.2004 passed in SCA No.1290 of 2003. Considering the aforesaid facts and circumstances and for the reasons stated in the judgment and order dated 25.10.2004 (Coram : K.S.Jhaveri, J) passed in SCA No.1290 of 2003 and other cognate matters, the following order is passed :

O R D E R

These petitions are partly allowed. It is declared that if the aforesaid vehicles whose numbers have been mentioned in para 1 of this order are carrying gross laden weight as per the certificate of registration, the respondents shall not take any penal action in respect of the aforesaid vehicles. However, the prayer regarding the refund of penalty or fine already paid by some of the petitioners is not granted. It is clarified that if the certificate is not issued in accordance with the provisions of the Act, it will be open for the respondents to take appropriate action after following proper procedure as contemplated under the Act. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(M.R.Shah,J)

(pathan)